IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

HON'BLE SRI DEVINDER GUPTA,THE CHIEF JUSTICE

and
HON'BLE MR JUSTICE B.SESHASAYANA REDDY

WRIT PETITION NO : 11673 of 1994

Between:

P.V.Rama Sarma, s/o late P.Brahmananda Rao,

Aged about 56 years,

R/o Post Office Road, Kamakotinagar,

Vijayawada

..... PETITIONER

AND

1. The State of Andhra Pradesh, General Administration (SC-F),

Department, Secretariat, Hyderabad represented by the Chief Secretary.

(dismissed for default vide Court order dated 21-9-1999)

2. The Registrar (Administration),

High Court of Andhra Pradesh, Hyderabad.

.....RESPONDENT(S)

Petition under Article 226 of the Constitution of India praying that in the

circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ of certiorari or other appropriate order or direction in the nature of a writ calling for the records resulting in G.O.Ms.No.34, General Administration (SC-F) Department, dated 21-1-1994 and quash the same as arbitrary and illegal and consequently direct the respondents to reinstate the petitioner into service with retrospective effect and grant other ancillary and attendant benefits in the interest of justice.

Counsel for the Petitioner: Mr. B.NALIN KUMAR

Counsel for Respondent No.2: Mr C.V.Nagarjuna Reddy

The Court made the following :

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JUDGMENT: (Per the **HON'BLE THE CHIEF JUSTICE SHRI DEVINDER GUPTA)**

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In this Writ Petition filed under Article 226 of the Constitution of India, the petitioner (Sri P.V. Rama Sarma), a former District and Sessions Judge, challenges the order passed by the 1st Respondent in G.O.Ms.No.34, General Administration (SC-F) Department dated 21.1.1994, removing him from service with immediate effect, as arbitrary and illegal and seeks a writ of certiorari to quash the same and to reinstate him into service with all consequential benefits.

The petitioner was selected as District Munsif by the A.P. Public Service Commission and he joined as such on 2.11.1973. Before appointment in the Judicial Service, the petitioner practised as an advocate at Vijayawada for about 11 years. On 7.2.1984, he assumed charge of District Judge Grade II in Higher Judiciary on appointment to the said cadre by transfer. During the year 1990, the petitioner was working as Additional District and Sessions Judge, Adilabad on transfer from Hyderabad. By letter-dated 5.6.1990, the petitioner applied for leave and on 11.6.1990, he also submitted a representation to the High Court requesting for his transfer from Adilabad. Leave for 61 days was granted on 14.6.1990.

A memorandum was submitted to the Chief Justice on 8.6.1990 along with copy of resolution dated 4.6.1990 by the Bar Association, Adilabad, resolving to abstain the Court of Additional District Judge, Adilabad, presided over by the petitioner, alleging indulgence in corrupt and unfair practices in dispensation of justice, with sworn statements of five advocates appended to the said representation. A complaint was also received from one Smt. T. Elizabeth Victoria Rani, the de facto complainant in C.C.No.1 of 1990, levelling charges against the conduct of the petitioner in having acquitted the accused in S.C.No.57 of 1990 on 8.6.1990. These led the disciplinary committee of the High Court to place the petitioner under suspension pending regular departmental enquiry. By proceedings dated 27.8.1990, the petitioner was placed under suspension pending enquiry into allegations against him.

Sri Justice V. Sivaraman Nair was appointed as the Enquiry Judge who by his proceedings dated 5.12.1990 framed eight charges against the petitioner. The petitioner submitted his explanation and statement of defence on 23.1.1991. Pursuant to the proceedings of the Disciplinary Committee dated 22.2.1991, the Enquiry Judge by his proceedings dated 27.2.1991 framed an additional charge on which also explanation of the petitioner was called for. The petitioner submitted his additional written statement of defence on 24.4.1991. Disciplinary proceedings thus proceeded and the Enquiry Judge submitted his report. Charges 1 to 8 and the additional charge were held proved against the petitioner, to the extent as indicated in the report of the Enquiry Judge. The Disciplinary Committee of the High Court on consideration provisionally accepted the report. The petitioner was furnished with a copy of the same along with a notice to showcause that why the findings be not accepted and punishment of dismissal from service be not imposed. After considering the explanation, the High Court accepted the report of the Enquiry Judge and recommended to the Government of Andhra Pradesh for imposing punishment of removal from service with immediate effect. The Government of Andhra Pradesh passed the impugned order dated 21.1.1994 accepting the recommendations of the High Court and imposing the punishment of removal from service with immediate effect.

The order imposing punishment is under challenge by the petitioner in this Writ Petition, inter alia, on the ground that neither the so-called sworn statements of the advocates, nor copies of the orders referred to in the order of suspension, the resolution of the Bar Association, Adilabad, or the complaint of Smt. T. Elizabeth

Victoria Rani discloses any misconduct on his part, justifying to place him under suspension and to initiate the disciplinary enquiry against him. The provisions as contained in Annexure VI to Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1964 which mandates conduct of a preliminary enquiry before initiation of a regular departmental enquiry were not complied with; the findings recorded by the Enquiry Judge are perverse, arbitrary and based on no material. The High Court accepted the report of the Enquiry Judge without giving personal hearing and recommended imposition of punishment of removal from service, which is arbitrary and violative of Articles 14, 16, 21, 235 and 311 of the Constitution. The findings recorded by the learned Enquiry Judge which are perverse, arbitrary and based on no material are as a result of misreading of the evidence on record and ignoring relevant and vital evidence adduced on behalf of the defence; it makes no reference or consideration of the evidence produced by the petitioner. The respondents contested the writ petition and filed counter-affidavits.

We heard learned counsel for the parties and were taken through the entire material on record. Elaborate submissions were made by the learned counsel for the parties, which we have duly considered and have also gone through the findings recorded by the learned Enquiry Judge. Having carefully gone through the material evidence on record and having considered the submissions made before us, we are of the considered opinion that the findings of guilt arrived at by the Enquiry Judge against the petitioner have been arrived at only upon suspicions and drawing of certain inferences which are not warranted on the material on record. The Enquiry Judge in arriving at his findings completely ignored from consideration the evidence favourable to the petitioner. May be that the petitioner in discharge of his judicial functions might have wrongly applied the law but there is neither any finding nor any evidence that the same was done by the petitioner with improper or corrupt motive or due to extraneous considerations. Facts found against the petitioner and inferences drawn do not amount to misconduct. Wrong conclusions, if any, arrived at by the petitioner in the judicial orders passed by him in exercise of the statutory powers vested in him were subject to judicial supervision in appeal. In the absence of any improper motive or extraneous considerations attributed to the petitioner and duly established in accordance with law, it is rather impossible to sustain the impugned order passed against the petitioner and the same is liable to be set aside.

Before proceeding further, we will note down each of the charges framed against the

petitioner in the departmental proceedings and the gist of the findings arrived at by the learned Enquiry Judge in respect of each charge.

Charge No.1: That he, while working as Additional District and Sessions Judge, Adilabad, obtained illegal gratification from the plaintiff in O.S.No.24/84 through her advocate and decreed the suit; and entertained her in chambers while proceedings in connection with the above suit were pending in his Court.

Finding: Charge No.1 insofar as it relates to the alleged receipt of illegal gratification by the charged officer from Sri A. Hanumantha Rao on behalf of the plaintiff in O.S.No.24 of 1984 on 14.10.1989 is not proved. Nor was the allegation that he called the plaintiff into his chambers or that he had been visiting the house of that plaintiff been proved. But to the extent of the charged officer being in receipt of amounts in excess of his known sources of income, there are very strong indications.

Charge No.2: That he while working as Additional District and Sessions Judge, Adilabad, rejected the claim of the petitioner in O.P.No.52 of 1987 on 25.4.1999 without relying on the judgment of the High Court in Appeal No.985 of 1989 presented by him, had subsequently, however, actuated by corrupt motive and extraneous consideration gave favourable judgment in O.P.No.44 of 1986 on 11.5.1990, awarding enhanced compensation of Rs.45,000/- per acre relying on the very judgment of High Court in the said Appeal No.985 of 1989.

Finding: Charge No.2 to the extent of judicial dishonesty in awarding widely different rates of compensation in O.P.No.52 of 1987 as against O.P.No.44 of 1986 has not been proved. But here again there is strong circumstances indicating impropriety in the discharge of his judicial functions. The charge as framed is not proved beyond this extent.

Charge No.3: That he while working as Additional District and Sessions Judge, Adilabad, and acting as Vacation Judge, actuated by corrupt motives, passed order on the last day of Vacation i.e. on 2.6.1990, allowing I.A.No.722 of 1990, filed by the respondent-plaintiff in A.S.No.8 of 1989, though there was no urgency to entertain the same disregarding the Commissioner's report and also accepted Bank guarantee furnished by the plaintiff-respondent for a lesser amount than the actual value of the felled timber.

Finding: Charge No.3 has been proved to the extent of undue anxiety on the part of the charged officer to pass orders in I.A.No.722 of 1990 in A.S.No.8 of 1989 on 2.6.1990 so as to forestall the District Judge who was to function regularly after the summer recess on that date, ordering release of timber insured at Rs.7,00,000/- on furnishing Bank guarantee only for Rs.4,00,000/-. It is also evident that this conduct amounts to gross impropriety on the part of the charged Officer.

Charge No.4: That he, while working as Additional Sessions Judge, Adilabad, actuated by corrupt motives, passed orders in the bail applications filed on behalf of the accused in Crime No.71 of 1990 of P.S. Adilabad, giving two separate findings on the same set of facts.

Finding: Charge No.4 has been proved to the extent of the charged officer passing orders on applications of accused for bail in the same crime in altogether different manner. But since those orders are judicial orders and there is no evidence of receipt of illegal gratification as an inducement, the charge as framed is not proved.

Charge No.5: That he, while holding Full Additional Charge of the post of District and Sessions judge, Adilabad, finalised and forwarded in indecent haste panels for appointment of Additional Public Prosecutor for the Court of Additional Sessions Judge, Adilabad and Public Prosecutor for Sessions Court, Adilabad, towards the end of May, 1990, without calling applications from the eligible candidates, apparently to pre-empt the District Judge and with intention to include certain names and with vested interest in particular candidates.

Finding: Charge No.5 is proved to the extent of an undue anxiety on the part of the charged officer to send up panels for appointment of Public Prosecutors and Additional Public Prosecutors in the District and Additional District Court of Adilabad, even though in the former case the then incumbent was to continue till the end of August, 1990, and in the latter, a Special Public Prosecutor had been appointed. It is also proved that the charged officer acted improperly and in haste in eliminating other eligible aspirants without reason. This conduct reveals gross impropriety in the discharge of administrative functions while he was holding charge of the post of district Judge for a short while as Vacation Civil Judge.

Charge No.6: That he, as Vacation Civil Judge:

(a) Actuated with ulterior motive, took up and ordered number of cheque petitions i.e. I.A.No.645 of 1990 to 661 of 1990 and 663 of 1990 to 666 of 1990 in O.P.Nos.250, 251, 253 to 255, 260, 263 to 268, 270, 290, 292, 293, 320, 322 of 1975 and 47 of 1976, 49/76, and 53 of 1976, respectively, by calling the records thereof from the Additional District Court though they did not warrant any urgency.

(b) That even in regular days as Additional District Judge, he used to tease the parties with a view to extract amount by adopting lengthy procedure in disposing of cheque petitions even in matters where the decrees are silent for the payment and the other side reported no objection; and

(c) That, he, while working as Additional District Judge, actuated by corrupt motive, passed orders in the cheque petition – I.A.529/90 filed by the claimant No.1 in O.P.No.194/88 for the issue of cheque for the entire amount that fell to her share to keep a part of the amount in Fixed Deposit, though she claimed and is entitled to for the payment of the entire amount that fell to her share; whereas he passed orders in I.A.Nos.645/90 to 661/980 and 663/90 to 666/90 in O.P.Nos.250, 251, 253 to 255, 260, 263 to 268, 270, 290, 292, 293, 320, 322 of 1975 and 47, 49 and 53 of 1976 respectively and I.A.No.462/90 in O.P.485/90, I.A.No.384/90 in O.P.269/88 and IA.490/90 in OP.156/88 and in particular IA.No.98/90 in O.P.No.228/88 for the issue of cheques for the entire decretal amount or the amount that fell to their share as the case may be without imposing conditions.

Finding: Charge No.6 has been proved to the extent that the charged officer, in spite of his awareness that he could not have issued cheques for payment of amounts in Court deposit while holding charge of the District Judge as Vacation Civil Judge, advanced cheque applications, allowed them and ordered payment of large amounts of money in applications filed mostly by two advocates, D.W.3 and Sri V. Hanumantha Rao. It is also proved that in doing so he acted discriminatorily.

Charge No.7: That he while working as Additional District and Sessions Judge, Adilabad, being aware that the advocates decided to boycott the Court from 4.6.1990 onwards acted in a highly improper manner in taking up for trial S.C.No.57/90 on 6.6.1990 and entertaining the accused therein in chamber before trial and in acquitting the said accused later on 8.6.1990, without issuing any summons to the de facto-complainant therein, without taking any evidence and without pursuing for attendance of the witnesses.

Finding: Charge No.7 has been proved to the extent that the charged officer acted recklessly in acquitting the accused in S.C.57 of 1990 on 8.6.90 while members of the Bar Association were boy-cotting his Court for the only reason that the Public Prosecutor or Investigating Officer or prosecution witnesses are absent. He knew that summons were not served on the witnesses. In other similar cases, he had adjourned cases due to, and allowed bail to the accused in spite of, absence of counsel. There is no evidence that the charged officer entertained the accused in his chambers on 6.6.1990. Though a judicial order which has been set at naught by the Court, the conduct of the charged officer shows absolute recklessness and impropriety. (emphasis supplied)

Charge No.8: That he, by indulging in the above instances in the discharge of his official duties, as alleged in charges 1 to 7 supra, caused embarrassment to his official position and brought derogation to the prestige of his office, constraining the bar Association, Adilabad, pass an unanimous resolution on 4.6.1990, to abstain his Court till he is transferred.

Finding: Charge No.8 is proved in that the indiscreet, reckless and

improper actions of the charged officer was the prime cause for the passing of Ex.A.2 resolution dated 4.6.1990 of the Bar Association, Adilabad to abstain from his Court. His actions therefore compromised the prestige of the judicial office he was holding.

Additional Charges: That he while working as II Additional Metropolitan Sessions Judge, Hyderabad, acquired two items of immovable property, i.e.

(a) 634 ½ sq. yds. Of house site in Chinakakani village, Mangalagiri Mandal, Guntur district, jointly in the name of his wife and self at a cost of Rs.22,207-50ps.; and

(b) 98 sq. yds of site and Daba house built in the year 1987 in Kakamotinagar, Vidyadharapuram, Vijayawada, in the name of his wife, for a sum of Rs.1,60,000/- obtaining permission therefor by furnishing certain sources of income in his application dated 16.2.1987 and 30.1.1987; that he has not mentioned the said sources of income in any of the Property and Relations Statements submitted by him till 9.1.1987, that the said two assets are, therefore, inferred to be disproportionate to the known sources of his income.

Finding: The Additional charge is proved in that the charge officer has not been able to prove fully and satisfactorily the sources for the purchase of the two items of immoveable properties in 1987 and 1988 and that he had not disclosed all the particulars of properties and income belonging to him and his wife in the property and relations statements which he had filed. On the basis of disclosures, which he had already made in such statements, it is proved beyond doubt that he had income and assets disproportionate to his known sources of income.

Before proceeding further we will notice the extent of the power of judicial review in a writ petition filed under Article 226 in matters arising out of the disciplinary proceedings.

It is well-established principle of law that judicial review is not an appeal from a decision but is a review of the manner in which decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment and to ensure that the conclusions, which the authority has reached, are based on some material on record. When an enquiry is conducted on charges of misconduct, the Court is

concerned to determine whether the enquiry was held by a competent officer, whether rules of natural justice are complied with; whether the findings or conclusions are based on some evidence and the authority entrusted with the power to hold enquiry has jurisdiction, power and authority to reach a finding of fact or conclusion. The findings must be based on some evidence. Neither the technical rules of evidence, nor of proof of fact or evidence as defined in the Evidence Act, apply to disciplinary proceeding. Adequacy of evidence or reliability of evidence cannot be permitted to be canvassed before the Court. When the authority accepts the evidence and the conclusions receive support therefrom, the disciplinary authority is entitled to hold that the delinquent officer is guilty of the charge. The Court in exercise of its power of judicial review does not act as an appellate authority to re-appreciate the evidence and to arrive at its own independent findings on the evidence. The Court may interfere where the authority has held the proceedings against the delinquent officer in a manner inconsistent with the rules of natural justice or in violation of statutory rules prescribing the mode of inquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have ever reached, the Court may interfere with the conclusion or the finding, and mould the relief so as to make it appropriate to the facts of each case. These principles are well settled and were reiterated by the Supreme Court in **B.C. CHATURVEDI V. UNION OF INDIA.**

In HIGH **COURT OF JUDICATURE AT BOMBAY v. SHASHIKANT S. PATIL** also the Supreme Court pointed out the circumstances under which the decision of departmental authorities can be interfered while exercising jurisdiction under Article 226 of the Constitution, namely, if such an authority has conducted proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or grounds very similar to the above. If there is some legal evidence on which the findings can be sustained, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226

of the Constitution.

In **LALIT POPLI v. CANARA BANK AND OTHERS** the extent of power of judicial review was again reiterated by the Supreme Court that the High Court does not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. Where the findings of the disciplinary authority are based on some evidence, Court or Tribunal cannot re-appreciate the evidence and substitute its own findings. The scope of interference is rather limited and has to be exercised within the circumscribed limits.

Having noted the extent and limit of the Courts' jurisdiction while exercising the powers of judicial review, what has to be analysed now by us is, whether the findings are based on some material on record or whether it is a case of no evidence or it is only a case of suspicion and inferences, ignoring the evidence favourable to the petitioner. It is important to note that the petitioner was posted as a Judicial Officer at Adilabad and initiation of disciplinary proceedings was as a result of resolution passed by the Bar Association, Adilabad.

In the case of a Judicial Officer, parameters, which are required to be taken into consideration, have been subject matter of judicial consideration by the Supreme Court from time to time. In **ISHWAR CHAND JAIN v. HIGH COURT OF PUNJAB AND HARYANA AND ANOTHER**, it was held that under the Constitution, the High Court has control over the subordinate judiciary. While exercising that control, the High Court is under a constitutional obligation to guide and protect Judicial Officers. An honest strict Judicial Officer is likely to have adversaries in the mofussil Courts. If complaints are entertained on trifling matters relating to judicial orders, which may have been upheld by the High Court on the judicial side, no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and independent manner. Supreme Court cautioned that, in such like matters, it is imperative that the High Court should also take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by unscrupulous lawyers and litigants. An independent and honest judiciary is a *sine qua non* for Rule of law. If Judicial Officers are under constant threat of complaints and enquiry on trifling matters and if High Court encourages anonymous complaints to hold the field, the subordinate Judiciary will not be able to

administer justice in an independent and honest manner. In the said case, the Supreme Court held that the resolution passed by the Bar Association against the appellant therein was unjustified and the complaints were motivated which did not deserve any credit. Even the Vigilance Judge after holding enquiry did not record any finding that the appellant therein was guilty of any corrupt motive or that he had not acted judicially. All that was said against the appellant was that he had acted improperly. The Supreme Court also held in that case that if orders are passed without there being any motive, the same should be overlooked by the High Court and proper guidance should be provided to the Judicial Officers.

In the case of Officers who exercise judicial or quasi-judicial powers, what has to be borne in mind is that departmental proceedings are not concerned with correctness or legality of the decision of the delinquent but only about the conduct of the delinquent in discharge of his duties as Judicial Officer. The legality or validity of the orders passed may be questioned in appeal or revision. Such orders cannot be made subject matter of appreciation in departmental proceedings. The test which has to be adopted in such like matters was again reiterated by the Supreme Court in **UNION OF INDIA v. A.N. SAXENA and UNION OF INDIA AND ANOTHER v. K.K. DHAWAN**

I n **K.K. Dhawan's** case, after examining the earlier decisions in **S. GOVINDA MENON v. UNION OF INDIA, V.D. TRIVEDI v. UNION OF INDIA, UNION OF INDIA v. R.K. DESAI** and **A.N. Saxena's** case, (supra), the Supreme Court indicated the basis upon which a disciplinary action may be initiated in respect of a judicial or a quasi judicial order as follows:

i. where the judicial officer has conducted in a manner as would reflect on his reputation or integrity or good faith or devotion to duty;

ii. that there is prima facie material to show recklessness or misconduct in the discharge of his duty;

iii. that if he has acted negligently or that he omitted the prescribed conditions which are essential for the exercise of the statutory powers;

iv. that if he had acted in order to unduly favour a party;

v. that if he had been actuated by corrupt motive.

The aforesaid parameters were approved by the Supreme Court in subsequent decisions in **ZUNJARRAO BHIKAJI NAGARKAR v. UNION OF INDIA AND OTHERS** and **P.C. JOSHI v. STATE OF U.P. AND OTHERS.**

In **P.C. Joshi's** case though an elaborate enquiry had been conducted by the enquiry officer, but it was held that there was hardly any material worth forthcoming except to scrutinize each one of the orders made by the delinquent officer on judicial side to arrive at a different conclusion. Thus, it was held that there was possibility on a given set of facts to arrive at a different conclusion on judicial side, but this cannot be a ground to indict a Judicial Officer for taking one view and that too for alleged misconduct for that reason alone. Enquiry Officer in that case had not found any other material which would reflect on his reputation or integrity or good faith or devotion to duty or that he had been actuated by any corrupt motive. The Supreme Court observed that at best it could be said that the view taken by the delinquent officer was not proper or correct and did not attribute any motive to him. It was held that where an order of a subordinate Court is found to be faulty and a disciplinary action were to be initiated for such an order, the confidence of the subordinate judiciary will be shaken and the officers will be under a constant fear of writing a judgment in a manner so as not to face a disciplinary enquiry and thus Judicial Officers cannot act independently or fearlessly. Merely because the order is wrong does not warrant initiation of disciplinary proceedings against the Judicial Officer.

In the light of the aforementioned legal position, we would like to examine charge-wise the evidence recorded in the disciplinary proceedings and the conclusions arrived at by the Enquiry Judge on all charges except Charge No.7.

Charge No.1: In nutshell, the essence of the charge is that the petitioner had obtained illegal gratification from the plaintiff in O.S.No.24 of 1984 through an advocate and decreed the suit. The petitioner is also charged that he had entertained the plaintiff in his chambers while the suit proceedings were pending in his Court. The Enquiry Judge held that this charge as regards acceptance of illegal gratification and plaintiff's visit to the chamber of the petitioner has not been proved.

Despite this, the Enquiry Judge observed that no doubt the charge is not proved, but there were strong indications to the extent of the charged officer being in receipt of amounts in excess of his known sources of income. We are of the view that these observations could not have been made under Charge No.1 since there was a separate additional charge framed in respect of acquisition of two items of immovable property by the petitioner. There was no specific charge framed against the Officer of being in receipt of amounts in excess of his known sources of income. In the absence of any charge framed against the delinquent officer, such observations could not have been made by the Enquiry Judge.

Charge No.2: This charge pertains to certain judicial orders passed in O.P.No.52 of 1987 and O.P.No.44 of 1986 on 25.4.1990 and 11.5.1990 respectively. Claim for enhancement of compensation was rejected in O.P.No.52 of 1987, whereas compensation was enhanced in O.P.No.44 of 1986 on the basis of a decision of the High Court in A.S.No.985 of 1989, though reliance was placed on the said decision by the petitioner in the former case also. The charge against the petitioner is that actuated by corrupt motive and extraneous considerations, compensation was enhanced in O.P.No.44 of 1986. The enquiry Judge held that to the extent of judicial dishonesty in awarding compensation at different rates is concerned, the charge has not been proved. Despite recording such a finding, again, as observed in respect of Charge No.1, the Enquiry Judge held that though the charge has not been proved, but, there were strong circumstances indicating impropriety in the discharge of his judicial functions. On close scrutiny of the evidence on record, we find no basis for making such observations.

The observations made against the charges 1 and 2 by the Enquiry Judge itself would suggest the approach, which the enquiry judge adopted, viz., to some how or the other indict the petitioner despite coming to a definite conclusion that the charges were not proved. Enquiry Officer was not expected to record any findings on any other charge not specifically framed against the delinquent officer. The Enquiry Judge having definitely and specifically come to the conclusion that the charges of illegal gratification, corrupt motive or extraneous consideration have not been proved, still to hold that there are strong circumstances indicating impropriety on the part of petitioner, is nothing but indicative of a biased mind with which the enquiry Judge proceeded in the matter.

Charge No.3: This charge says that actuated by corrupt motives, orders were passed by the petitioner as Vacation Civil Judge on the last day of vacation by allowing the application filed by respondent-plaintiff in A.S.No.8 of 1989 though there was no urgency in entertaining the said application and in accepting bank guarantee furnished by the plaintiff for the lesser amount than the actual value of the timber. Enquiry Judge did not found the petitioner guilty in having passed the orders actuated by corrupt motives. He held the charge proved only to the extent of showing undue anxiety in passing the order in indecent haste and in releasing the timber insured at Rs.7.00 lakhs on furnishing bank guarantee only for Rs.4.00 lakhs observing that this conduct amounts to gross impropriety on the part of the petitioner. The Enquiry Judge found that there was no direct evidence of any illegal gratification demanded or received by the petitioner.

Evidence in support of the charge consisted of memorandum of the Bar Association dated 8.6.1990 and the sworn statement of Sri S. Rajaram who was appointed as advocate Commissioner in the said case. Report of the Commissioner was marked as Ex.A.24 dated 12.2.1990, which evaluated the felled timber at Rs.4.00 lakhs. Application for release of the timber was filed in Court on 24.5.1990 in which notice was ordered to the Government Pleader on the same date and the application was posted to 25.5.1990. Counter was filed on 28.5.1990 and at the request of Government Pleader the application was posted to 29.5.1990. On 30.5.1990 arguments were heard and was posted for orders to 1.6.1990. Since orders were not ready, the case was posted to 2.6.1990 on which date order was passed directing release of timber. The contents of affidavit Ex.A.20 filed in support of the application and the order passed by the petitioner Ex.A.23 explicitly stated the urgency that the timber was lying exposed to weather and was likely to be damaged unless it was removed to a safer place, as monsoon rains were likely to come in the near future. Advocate-Commissioner P.W.4 valued the timber at Rs.4.00 lakhs. The defence of the petitioner was that based upon such valuation given by the Commissioner, he passed Order Ex.A.23 since the Government Pleader did not suggest any other figure. Figure of Rs.7.00 lakhs was the figure for which the timber had been insured. On the basis of this evidence on record, the Enquiry Judge recorded finding that there was no direct evidence of any illegal gratification demanded or received, but observed that it was a case of indecent haste in having

passed the order. According to the Enquiry Judge, there was no such urgency and the matter could have waited till the regular District Judge assumed office before whom such an application could have been filed.

On the finding so recorded or conclusions arrived at by the Enquiry Judge, it would be difficult to draw any inference of undue haste without there being any motive or extraneous consideration duly established in the enquiry. In the absence of guilt of corrupt motive, no punitive action could be taken against the petitioner in case we have to follow the dictum of the Supreme Court in **Iswar Chand Jain's** case (supra).

Charge No.4: This charge is with respect to judicial orders passed on bail applications in Cr.No.71 of 1990 of Police Station, Adilabad. After recording two separate findings on the same set of facts, the enquiry Judge found against this charge also that there was no evidence of receipt of illegal gratification as an inducement and to that extent charge as framed is not proved. Still he held that the charge has been proved to the extent that the charged officer passed two types of orders in the same crime in altogether different manner. Evidence adduced in support of the charge is oral testimony of Advocate, P.W.2 Sri Moinuddin, Exs.A.25 to A.29 and D.25 to D.26(b), applications and orders on the docket sheets in respect of the two bail applications. Bail was granted to 3rd accused by order passed on 25.4.1990 (Ex.A.26). The reasons recorded for releasing this accused on bail were that there was no need to detain him for conducting test identification parade, since he was a man of the locality and was apprehended soon after the offence and also because of the fact that investigation was almost complete. Whereas in respect of the other accused in the same crime, bail was rejected on the ground that they are strangers to the victim and that investigation was not complete and that test identification was necessary for the prosecution to ensure correct identity. Enquiry Judge found that there was no direct evidence of illegal gratification and allegations are largely inferential. Still he proceeded to hold this charge as proved. At another stage, he referred to the statement of P.W.2 who is stated to have deposed that apart from inferences, which could be drawn from his conduct, he was aware that the delinquent officer was indulging in corrupt practices. On this also it was found that "these are strong points to gross impropriety of the charged Officer. Here again I refrain from finding the charged officer guilty of corrupt motives in the absence of more positive proof. The inference of impropriety in his conduct induced by the circumstances mentioned above seems to be overwhelming". It is difficult to draw

such inference from the above statement of P.W.2 in the absence of any material evidence adduced on record establishing that the petitioner had actually indulged in corrupt practices. The finding recorded by the Enquiry Judge is nothing but a finding on no evidence and on the basis of which no punitive action could be taken against the petitioner. The case is clearly covered by the decision of the Supreme Court in **P.C. Joshi's case** (supra) wherein the Supreme Court held that where there is possibility on a given set of facts to arrive at different conclusions, it is no ground to indict a Judicial Officer for taking one view. As already stated, enquiry Judge had not found that the order was motivated one or was a result of any corrupt act. The petitioner had assigned reasons in his orders why bail was granted to one of the accused and why it was denied in respect of the other two accused.

Charge No.5: This charge pertains to the administrative functions of the petitioner while he was holding full additional charge of the post of District Judge, Adilabad. The charge is that he had shown indecent haste in finalising and forwarding the panels for appointment of Additional Public Prosecutor for the Court of Additional Sessions Judge, Adilabad and Public Prosecutor for the Sessions Court, Adilabad, without inviting applications from the eligible candidates, apparently to pre-empt the District Judge and with intention to include certain names. This charge is held to have been proved by the Enquiry Judge to the extent of undue anxiety on the part of the petitioner to send up panels though in the case of Public Prosecutor of Sessions Court, the incumbent was to continue till August, 1990 and in the case of Additional Public Prosecutor, Special Public Prosecutor was appointed. It was also found that it was proved that the petitioner acted improperly and in haste in eliminating other eligible aspirants without reasons, which amounts to gross impropriety in the discharge of administrative functions while holding charge of the post of District Judge. There is no charge of corrupt motive or dishonesty, malice or prejudice, nor the same have been established in enquiry nor there is any evidence on record in regard thereto. According to the Enquiry Judge, what was established was that there was undue haste and anxiety on the part of the petitioner in sending up the panels and the act of not inviting applications from all eligible candidates from the Bar by issuing a notification for the purpose of preparing the panels.

In this connection, reference may be made to a decision of the Division Bench of this Court in **V. KISHORE KUMAR v. THE STATE OF A.P. THROUGH THE SECRETARY, LAW (CTS.) DEPARTMENT, HDYERABAD** wherein the act

of issuing notification by District and Sessions Judge calling for applications or bio-data from advocates for appointment as Public Prosecutors was held as not proper. The Court laid down that the proper procedure would be to obtain bio-data only from such of those advocates whom the District and Sessions Judge considers fit to be appointed as Public Prosecutors and to send a panel of eligible candidates only. It was held that that an advocate has neither legal, nor vested right to seek issuance of such a notification. In view of this judicial pronouncement, the act of the petitioner in not inviting applications from the entire advocate community at Adilabad could not have been faulted with. As a matter of fact, the resolution and memorandum of the Bar Association had mainly highlighted this conduct on the part of the petitioner to be highly improper affecting their right to be considered for appointment as Public Prosecutor or Additional Public Prosecutor.

The fact cannot be lost sight of that the petitioner was holding full additional charge of the post of District and Sessions Judge. He was thus required and expected to discharge the duties that are attached to the Office of District Judge. He could not have shirked from discharging such duty or could not have waited for a regular District Judge to come and take charge particularly when the incumbent had been transferred and new appointee had not taken over the charge. More over, the evidence on record is that the District Collector had asked for sending of the panel immediately. Though the charge framed against the petitioner was that apparently the petitioner sent up panel with undue haste with intention to include certain names and with vested interest in particular candidates, the enquiry Judge did not come to the conclusion that there was such an intention or vested interest in particular candidates. In para 23 of his report, the enquiry Judge proceeded to observe that it is not the question of propriety of inclusion of one name or the other that is the substance of the charge, but it is the indecent haste with which the delinquent officer sent up the panel. We are of the view that sending of panels by an officer who was given full additional charge, in the absence of any oblique motive, would not be sufficient to proceed against the Officer in a departmental proceedings.

Charge No.6: This charge is also based upon the allegation that the petitioner had acted with undue haste in his capacity as Vacation Civil Judge and took up cheque applications in matters pending before him as Additional District Judge by calling for the records though there was no such justifiable urgency. This charge was found to

have been proved to the extent that the petitioner was aware that he could not have issued cheques for payment of amounts in court deposits for payment during vacation. He advanced cheque applications and ordered payment of large amounts of money in applications filed by only two advocates, D.W.3 and Sri V. Hanumantharao and while doing so he acted discriminatorily. The enquiry Judge referred to Rule 11(iii) of the Rules framed by the High Court in exercise of its powers under sections 22 and 31 of the Andhra Pradesh Civil Courts Act, 1972 and observed that he could not have dealt with the said applications and ordered payment. These Rules were framed and were published in Andhra Pradesh Gazette on 30.11.1972. Rule 11(iii) reads as under:

> "Repayment of unexpended cash under Rule 172 (new Rule 240) Civil Rules of Practice and Circular Orders (Volume 1) shall be deferred until the reopening of Courts."

Clause (iii) of Rule 11 requires deferment of repayment of unexpended cash under rule 172 (now Rule 240) of Civil Rules of Practice (Vol.1) until reopening of the Courts. Except this rule, our attention was not drawn to any other Rule or Regulation, which prohibits a Judicial Officer from issuing a cheque or dealing with cheque petitions during vacation. The charge is based on the allegation that in one case the charged officer released only part payment of the compensation awarded and directed deposit of the remaining amount in a fixed deposit in a case arising out of a motor vehicles accident claim even though there was no stipulation in the award. The award in the said case was for a sum of Rs.39,000/-. The petitioner directed deposit of Rs.19,000/- in a fixed deposit in a nationalised bank for a period of one year and directed payment of Rs.20,000/- by way of cheque to the claimants. This obviously the petitioner did by relying upon the ratio of the decision reported in **NEW INDIA ASSURANCE CO. LTD. v. MADAPATI NARAMMA** and a Division Bench decision of Gujarat High Court in **MULJIBHAI AJARAMBHAI AND ANOTHER v. UNITED INDIA INSRUANCE COMPANY LTD. AND OTHERS.** The Enquiry Judge lost sight of the fact that with a view to protect the interests of the beneficiaries, the petitioner directed certain amounts to be kept in a fixed deposit while directing release of a part of amount on need based requests after recording statement of petitioners who had filed the cheque petitions. This order was in consonance with the judgment of this Court and of the Supreme Court. Except the

statement of the advocate who had a grouse against the petitioner for not including his name in the panel for appointment as Public Prosecutor, there is no evidence on record in support of this charge. The evidence, which has come on record, would suggest that paltry amounts were released on the applications of two advocates having leading practice. In most of the cases, amounts released were very meagre and applications had been pending for considerable time for release of payments. In the absence of any oblique motive or acceptance of illegal gratification or other extraneous considerations, there was no justifiable ground to proceed with the charge against the petitioner merely on the ground that he proceeded to deal with the applications with undue haste. It is not disputed that the persons to whom the amounts were released were entitled thereto. It is also not the case that there was any embargo in paying the amount to whom the amount was paid. It is also not the case that any other person had laid claim to the amount or that the claimants had not actually received the amounts. In the absence of any oblique motive that the amounts had been released for illegal gain, against such an Officer discharging his duties of the Office, which he was holding, no punitive action could have been taken.

Charge No.8: This charge is general in nature that the petitioner had indulged in the incidents as alleged in charges 1 to 7 which caused embarrassment to his official position and brought derogation to the prestige of his Office because of which the Bar Association had to pass a resolution to abstain the petitioner's court till he is transferred. The Enquiry Judge found that indiscreet, reckless and improper actions of the petitioner was the prime cause of Bar Association passing a resolution and therefore the charge was proved since the action of the petitioner had compromised the prestige of the judicial office which he was holding.

The conclusions arrived at by the enquiry Judge would suggest that a Judicial Officer must act on the dictates of the lawyers and subject himself to their demands, whether legal or illegal. Such a conclusions arrived at by the Enquiry Judge goes contrary to the judgment of the Apex Court in **Iswar Chand Jain's** case (supra) that an honest strict judicial officer is likely to have adversaries in the mofussil courts and if complaints are entertained on trifling matters relating to judicial orders no judicial officer would feel protected and it would be difficult for him to discharge his duties in an honest and decent manner. High Court has to take steps to protect its honest officers by ignoring ill-conceived or motivated complaints made by the unscrupulous lawyers and litigants.

The essence of the charge is that because of the attitude of the petitioner, the Bar Association was constrained to pass a resolution to go on strike, which brought derogation to the prestige of the Office of District Judge. At the cost of repetition, we may observe that the Supreme Court in **Harish Uppal's** case (supra) has deprecated the practice of lawyers going on strike holding that the lawyers have no right to boycott the Courts.

Additional charge: This charge pertains to purchase of 634 ¼ sq. yards of house site in Chintakakani village, Guntur district in the name of the petitioner and his wife for a consideration of Rs.22,207.50 ps. and purchase of 98 sq. yds. Of site and daba house built in 1987 in Kamakotinagar, Vijayawada for a sum of Rs.1,60,000/- in the name of his wife. The enquiry Judge found that the additional charge is proved to the extent that the petitioner had failed to prove fully and satisfactorily the sources for purchase of the two items of property in 1987 and 1988 and that he had not disclosed all the particulars of properties and income belonging to him and of his wife in the property and relations statements which he had filed. Evidence on record is to the effect that as regards the first item of property, an application was filed by the petitioner on 16.2.1987 (Ex.A.109) seeking permission to purchase the property. By order dated 4.3.1987 (Ex.A.135) permission was granted by the High Court. On 8.4.1987 (Ex.A.110) the petitioner informed the High Court that he has purchased the property under first item at an enhanced price of Rs.35/- per sq. yd as against Rs.20/- per sq. yd. Similarly, in respect of the property under second item, application Ex.A.111 was submitted by the petitioner to the High Court on 22.12.1988. On 23.1.1989, the High Court asked for source of funds. By letter dated 30.1.1989 (Ex.A.112) the petitioner explained the source of funds and on 17.2.1989 (Ex.A.136) permission was granted by the High Court to purchase the property. Further, the petitioner who owned Ac.5.26 cts. of land in Banta Kunta village in Kurnool district sold the same in 1972 for Rs.35,000/- and gave the proceeds to his wife. This property belonged to his paternal grandmother who bequeathed it in favour of the petitioner through a registered will dated 7.9.1970 (Ex.D.37). One Dhanraj borrowed from his wife money and executed a promissory note on 15.6.1973 and renewed the pronote on 20.5.1983 (Ex.,D.35) for Rs.45,000/- and he paid Rs.10,000/- on 20.3.1985, Rs.25,000/- on 25.1.1988 and Rs.50,600/- on 1.10.1988. D.W.6 Sri T. Narayana Rao also borrowed a sum of Rs.10,000/- from his wife under Ex.B.31 pronote dated 15.10.1970. On 16.1979 he executed a renewal

pronote under Ex.B.32. He addressed a letter-dated 9.10.1982 to the petitioner about repayment (Ex.B.33). His son wrote letter-dated 10.10.1982 under Ex.D.34 in connection with the repayment of the loan. Entire payment was made by end of October, 1982, vide Ex.B.34 letter. Discharge endorsement on the pronote was made on 27.10.1982. The brother-in-law of the petitioner Sri B.S. Murthy, D.W.8 paid Rs.43,000/- to the wife of the petitioner and this represents the amount of the wife of the petitioner in the hands of D.W.8. Sri B.B. Sastry, D.W.9, another brother-in-law of the petitioner paid Rs.65,000/- to the wife of the petitioner in October, 1988 and this amount represents the amount of the wife of the petitioner in the hands of D.W.9. In nutshell, during 1987-88 the source of funds was explained as coming from D.W.8 and D.W.9, Dhanaraj and from the petitioner and other available sources. Amount was not such a huge amount that the petitioner was expected to maintain or explain for each and every pie. Having disclosed the sources from which the money was paid for which there was no evidence in rebuttal, the petitioner was not expected to meticulously demonstrate by producing vouchers for each item of property purchased.

The Enquiry Judge found that the payment of monies by his brothers-in-law, Dhanraj and himself to his wife were not substantiated by producing the bank accounts. It is not that in every case the amounts paid should and necessarily be drawn from the banks. None of the sources as disclosed by the petitioner and proved on record is a source, which is objectionable. Acquisition of property by the Officer cannot be considered to be a misconduct; it would constitute as misconduct only had it was a benami act, which it was not. The petitioner led voluminous evidence but strangely the enquiry Judge neither advert to that evidence nor referred to it. Without reference to this evidence, the Enquiry Judge concluded that though there is no direct evidence of payment and receipt of illegal gratification by the charged officer in any one of the instances which are subject matter of the charges, but, on a consideration of the totality of the evidence and the explanations offered by the charged officer, he was inclined to hold that the charged officer has failed to explain the sources for investments covered by the additional charge and in the absence of proper explanation and production of material documents adverse inference could be drawn against the petitioner. This inference is without any basis and is impermissive. A Government servant is not supposed to keep the vouchers and bills for all times to come. It is not that the petitioner had not obtained permission from the High Court for purchase of the properties. Permission was duly applied for

and granted. The High Court had also satisfied itself and the sources were found to be adequate while granting permission. In the absence of any other evidence establishing that the transactions are benami, it was impermissible to hold the charge as proved.

The enquiry Judge on an erroneous assumption that the petitioner had not disclosed the income and the assets of his wife, also recorded a finding on suspicions and inferences and failed to see that so far as the income of the petitioner is concerned, he had regularly filed property statements to the High Court regarding the status of his properties and in so far as his wife is concerned, she was not having any immovable property prior to the purchase of the property in question. The rules at the relevant time did not require filing of any statements regarding the income and property of his spouse. In fact there was no column in the proforma statement requiring disclosure of the income of the spouse. Without examining, whether the explanation given by the petitioner was just and proper and the evidence produced by him with reference to the purchase of two items of properties were genuine and bona fide, the Enquiry Judge, on an erroneous assumption, recorded adverse findings against the petitioner. The Enquiry Judge recorded his findings without examining the sources of income of the petitioner, his aggregate income, and ability to purchase two items of immovable property, in the light of the explanation, which had been offered. The petitioner had joined Judicial Service in November, 1973 and had put in 15 years of service when the two properties were purchased. Cogent explanation was given by the petitioner about his sources. He also examined oral and produced documentary evidence. Such evidence was not adverted to and findings were recorded as if the petitioner had to account for each and every pie. The findings, therefore, are perverse, as they cannot be said to be based on some evidence. This charge was, therefore, unfounded and baseless.

As already observed, the conclusions were arrived at by the Enquiry Judge on Charges 1 to 6, 8 and additional charge on mere suspicions and on drawing erroneous inferences. To sustain the punishment imposed on the petitioner, based upon such suspicions and inferences, in our considered opinion, would infringe the fundamental rights guaranteed to the petitioner under Articles 14 and 16 of the Constitution. In the light of the decisions in **Iswar chand Jain's** case and of **P.C.**

Joshi's case, when enquiry officer had not found any material which would reflect on the petitioner's reputation or integrity or good faith or that he was actuated by any corrupt motive, holding the petitioner guilty of charges 1 to 6, 8 and additional charge was erroneous and the High Court also was wrong in accepting such a report and making recommendations to the Government, which led to passing of the impugned order.

Now we will take up Charge No.7. Deciding a criminal case and acquitting the accused during the period when lawyers boycotted the petitioner's Court is the subject matter of this charge. The Enquiry Judge found such an act on the part of the petitioner to be reckless amounting to impropriety. Learned counsel for the petitioner urged that it was a judicial order passed by the petitioner and it cannot be said that the petitioner could not have passed such an order. There is no prohibition in law not to take up any proceeding during the period when the lawyers are on strike. At this stage, it will be apt to refer to a decision of the Supreme Court in **Ex CAPT. HARISH UPPAL v. UNION OF INDIA AND ANOTHER** relied upon by learned Senior Advocate appearing for the petitioner. The Supreme Court had an occasion to deal with the aspect, whether lawyers have a right to strike and/or give a call for boycott of the Courts. It was held that the lawyers have no right to go on strike or give a call for boycott of Courts and the right of appearance is within the control and jurisdiction of Courts. It may be noted herein that the Supreme Court in the said case approved the decision of a Division Bench of Delhi High Court (to which incidentally one of us viz., Devinder Gupta, CJ, was a member), in **B.L. WADEHRA v. STATE (NCT OF DELHI) AND OTHERS.** The Supreme Court quoted para 31 of the Judgment of the Division Bench of Delhi High Court with approval, which says:

> Every Court has a solemn duty to proceed with the judicial business during Court hours and the Court is not obliged to adjourn a case because of a strike call. The Court is under an obligation to hear and decide cases brought before it ad it cannot shirk that obligation on the ground that the advocates are on strike. If the counsel or/and the party does not appear, the necessary consequences contemplated in law should follow. The Court should not become privy to the strike by adjourning the case on the ground that lawyers are on strike. Even in the Common Cause case the Supreme Court had asked the members of the legal profession to be alive to the possibility of Judges refusing adjournments merely on the ground of there being a strike call and insisting on proceeding with the cases. Strike infringes the litigant's fundamental right for speedy trial and the Court cannot remain a mute spectator or throw up its hand in helplessness on the face of such continued

violation of the fundamental right.

Mr. K.G. Kannabhiran, learned counsel for the petitioner urged that when there was no such prohibition for the petitioner to proceed and deal with a matter in accordance with law during the period when lawyers were on strike, action of the petitioner could not have been faulted with in the absence of any oblique motive. More over, there is a judgment operating in the field rendered by a learned Judge of this Court in **THE PUBLIC PROSECUTOR, HIGH COURT OF A.P. v. MD. ANWARUDDIN SIDDIQUI AND OTHERS** that where the prosecution fails to produce witnesses, the Court has power to acquit the accused. In the said case, which was triable by a Court of Session, trial of the case was adjourned on a number of times. Even though the prosecution witnesses were served, the prosecution was not able to produce the witnesses, therefore, the accused were acquitted. The order of acquittal was upheld by the High Court. It was thus urged that there was no impropriety on the part of the petitioner calling for taking any disciplinary proceedings. Such an order passed by the petitioner on judicial side could not have been faulted with and the petitioner could not have been found guilty of the charge in the absence of any oblique motive.

As already noticed above, the Enquiry Judge found Charge No.7 proved to the extent that the charged Officer acted recklessly in acquitting the accused in S.C.No.57 of 1990 while members of the Bar Association were on strike and Public Prosecutor and Investigating Officer were absent. It was also found that in other similar cases, charged officer granted adjournments because of the absence of the counsel or even granted bail in some natters. But, a different standard was adopted by him while dealing with S.C.No.57 of 1990.

There was a complaint received by the High Court with respect to this charge that the charged officer hustled through the trial of S.C.No.57 of 1990 on 6.6.1990 and having entertained the accused therein in his chambers before trial, acquitted him on 8.6.1990, without issuing summons to the complainant who was the de facto complainant in the criminal proceedings. Evidence, which was adduced during the departmental proceedings, comprised of oral testimony of P.W.9 Elizabeth Victoria Rani and documents Exs.A.89, A.90, A.123 to A.127 and A.132. The Enquiry Judge noted the defence of the charged officer that when the criminal case had come up before him, with the consent of the parties, he fixed the schedule for trial to be

commenced on 6.6.1990. Summons were also issued to witnesses as desired by the Investigating Officer and Public Prosecutor. On 6.6.1990 when case was called, neither the Public Prosecutor nor the Investigating Officer was present. Even counsel for the defence was not present. Nowhere in his defence the charged officer made reference to the presence of the witnesses on that day in Court but stated that he had issued summons to the Investigating Officer by certificate of posting, but the same were returned as refused, therefore, he assumed that summons were not necessary and that prosecution could produce its own witnesses, all of them being local persons. Since nobody appeared on 6.6.1990 and no representation was made on 7.6.1990, therefore, he proceeded to acquit the accused on 8.6.1990.

The findings recorded by the Enquiry Judge are that in another case ie Crime No.71 of 1990 of Police Station, Adilabad, despite absence of the counsel and the Investigating Officer, the charged officer granted bail to the accused therein. In another case ie S.C.No.131 of 1989 posted on that day along with Crl. Miscellaneous Petitions, accused were present. But the Additional Public Prosecutor and the defence counsel were not present. Investigating Officer and witnesses were also present. Adjournment in the said case was granted on account of absence of Addl. P.P. and counsel for the defence. In another Criminal case S.C.No.76 of 1990, Criminal Miscellaneous Petitions were posted on 7.6.1990. Accused were present in the said case but the Addl. Public Prosecutor and the defence counsel were not present. Notwithstanding the absence of Addl. Public Prosecutor and the defence counsel, case was adjourned by the charged officer recording that defence counsel and Addl. Public Prosecutor were absent. Enquiry Judge thereafter examined critically the statement of complainant P.W.9 that the charged officer adopted an entirely different and hostile attitude. P.W.9 was the first witness for the prosecution in S.C.No.57 of 1990. In Ex.A.124, which is the copy of the complaint, she has been mentioned as prosecution witness. In her evidence before the Enquiry Judge she stated that she was present in Court on 25.5.1990, 6.6.1990 and 7.6.1990. Though her name is not mentioned in the diary maintained by the Court, the Enquiry Judge found that her statement remained unrebutted and was not effectively met during the enquiry by the charged officer. She submitted complaints Exs.A.123 and A.125 to the High Court reiterating her assertion that the charged officer had entertained the accused in S.C.No.57 of 1990 in his chambers. Her assertion was that only the name of the accused alone was called and names of

witnesses were not called. Enquiry Judge found that this statement of P.W.9 was not seriously shaken in cross-examination. It is important to note that in S.C.No.57 of 1990 summons were not served. Though in all other cases of similar nature, adjournments were granted by the charged officer because of absence of counsel for the defence and the Public Prosecutor due to strike by lawyers, or even in one case bail was also granted in the absence of Investigating Officer and Public Prosecutor or counsel for the defence, yet, in S.C.No.57 of 1990, instead of adjourning the case, totally a different standard was adopted by the charged officer, passing an order acquitting the accused.

Now, the question would be, whether any interference is called for in the action of the High Court in accepting the said findings in relation to Charge No.7 pursuant to the report of Enquiry Judge?

No doubt insofar as order of acquitting accused is concerned, order being judicial in nature, mere act of acquitting the accused may not be sufficient to initiate disciplinary proceedings since the order is correctable in appeal and was in fact corrected in appeal by the High Court and the order passed by the charged officer was set aside and the case was remanded for re-trial.

Now, we have to examine, whether, on the para meteres laid down in **K.K. Dhawan's case**, disciplinary action can be initiated against the officer for alleged recklessness or misconduct in the discharge of his duty. As already noted earlier, the Supreme Court, in **K.K. Dhawan's** case indicated the basis upon which a disciplinary action may be initiated in respect of a judicial or a quasi-juridical order. The Apex Court indicated that when there is material to show recklessness or misconduct in the discharge of duties by the officer, disciplinary action can be initiated against the Officer. In the instant case, finding recorded by the Enquiry Judge was that totally a different standard was adopted in S.C.No.57 of 1990 in acquitting the caused whereas in almost similar cases, adjournments were granted because of lawyers' strike or absence of defence counsel or Public prosecutor.

We have scanned through the evidence on record and we find no illegality or irregularity in the High Court accepting the findings of the Enquiry Judge since no two opinions can be formed on the evidence on record that the conduct of the charged officer was absolutely reckless and improper amounting to impropriety.

Charged officer knew that summons in S.C.No.57 of 1990 were not served on the witnesses. He also knew that Public Prosecutor and defence counsel were absent due to lawyer's strike. Charged officer, however, proceeded with the case and acquitted the accused. Strangely, in similar cases, where defence counsel and Public Prosecutor were absent, the charged officer either granted adjournments or granted bail. The order passed by the charged officer in S.C.No.57 of 1990 does not disclose what special reasons prevailed over him in proceeding with the case and passing an order of acquittal, particularly, when in similar cases, such a course was not adopted by him. Therefore, there is sufficient material to initiate disciplinary proceedings against the charged officer for the misconduct or recklessness in the discharge of his duties.

The Enquiry Judge took pains to carefully scan through the evidence and recorded the findings as aforesaid. We have earlier noticed that while exercising jurisdiction under Article 226 of the Constitution, the High Court will not act as an appellate authority. Its jurisdiction is circumscribed by limits of judicial review to correct errors of law or procedural errors leading to manifest injustice or violation of principles of natural justice. Judicial review is not akin to adjudication of the case on merits as an appellate authority. It must also be remembered that a judicial officer in the discharge of his duties must conduct himself in such a way not to give any scope for criticism, more particularly, when he exercises judicial discretion. Applying different standards while exercising judicial discretion in cases coming before him when facts are almost similar or where similar situation exists, as is the case in the instant case, would amount to committing judicial impropriety. Such a conduct would also amount to recklessness and negligent act in discharge of his duties for which the Enquiry Judge held that the charged officer was guilty of that. We are, therefore, of the view that so far as the findings recorded by the Enquiry Judge and the action of the High Court in accepting those findings in relation to Charge No.7 is concerned; no interference is called for by this Court. The question now is as to the quantum of punishment, which ought to be imposed upon the petitioner to the extent the charge is proved.

The High Court had accepted the findings arrived at by the Enquiry Judge on all the charges and punishment of dismissal from service was imposed considering the fact that all the charges are proved against the charged officer, that is to say, taking the cumulative effect of proof of all the charges. We have earlier come to the

conclusion that in so far as charges 1 to 6, 8 and Additional Charge are concerned, no disciplinary action could have been initiated against the charged officer. Therefore, in our view, the matter must be examined afresh by the High Court as regards the quantum of punishment to be imposed on proof of charge No.7 to the extent aforementioned that the charged officer had acted recklessly by adopting different standards in passing an order acquitting the accused in S.C.No.57 of 1990 and granting adjournments in similar cases.

In result, the Writ Petition is partly allowed. The impugned order passed by the 1st Respondent in G.O.Ms.No.34, General Administration (SC-F) Department dated 21.1.1994 is quashed and set aside with the direction that fresh recommendation be made by the High Court recommending appropriate punishment to be inflicted on the petitioner on proof of charge No.7 to the extent aforementioned. No costs.

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Devinder Gupta, CJ

16th March, 2005 _____

B. Seshasayana Reddy, J

vtv

Assistant Registrar

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SECTION OFFICER

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One fair copy to Hon'ble Sri Justice B.Seshasayana Reddy, Judge, High Court of Andhra Pradesh, Hyderabad.

1) The Registrar (Administration), High Court of A.P., Hyderabad.

2) The Secretary, Ministry of Law, Justice and Company Affairs, Union of India, New Delhi.

3) The President, High Court Advocates' Association, High Court Buildings, Hyderabad.

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